

January 22, 2021

Mr. John Koluch
2638 Linzey Rd.
Baltimore MD 21221

Re: Koluch Property, 2638 Linzey Road 21221
Critical Area Administrative Variance
Tracking No. 07-20-3327

Dear Mr. Koluch:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the variance request for proposed development on the above referenced property. The property is located within a Resource Conservation Area in the Chesapeake Bay Critical Area. The request proposes to impact 896 square feet of the Critical Area buffer to construct a garage with the continued existing use of a dwelling, deck, shed, yard area, and driveway. Tidal wetlands exist on most of the western part of the site, and the required buffer covers the entire property above mean high water. Forest exists in the northern part of the property.

The Director of EPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.12.04. There are seven (7) criteria listed in COMAR 27.01.12.04 that shall be used to evaluate the variance request. All seven of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in an unwarranted hardship. With tidal wetlands covering the majority of the property, the required Critical Area buffer covers the entire site above mean high water. The applicant seeks continued use of the dwelling, deck, shed, driveway, and yard areas, with improvements that include a garage to replace a smaller garage razed several years ago. Based on the plan, buffer impacts have been minimized when considering practical use of this environmentally constrained property. The garage is proposed in an open area at the edge of the access road and partially over existing lot coverage. Literal enforcement of the regulations would not allow for any new construction for a practical use, or the continued existing uses on this grandfathered property. Based on this, special conditions do exist that are peculiar to this site, and literal enforcement of the regulations would result in an unwarranted hardship. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the property owner of rights commonly enjoyed by other properties in similar

areas within the Critical Area. Other residential property owners in the Critical Area with similar site constraints enjoy uses like the uses proposed in this application. Literal enforcement of the regulations would deprive the owner from constructing the garage, and from continued existing uses. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Impacts to the Critical Area buffer for the proposed development and continued existing uses on this property would not be denied to similar properties with similar site constraints in the Critical Area. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances that are the result of actions by the applicant. No work has been conducted on the property that has required this variance request. Therefore, the fourth criterion has been met.

The fifth criterion requires that the variance request does not arise from any conforming or nonconforming condition on any neighboring property. This variance request involves the continued existing uses, and the construction of a garage on the referenced residential property. The request does not arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. Therefore, the fifth criterion has been met.

The sixth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area. The proposed garage has been located to avoid additional impacts within 25 feet of tidal wetlands, and to avoid forest impacts. While there are also existing residential uses to remain, some lot coverage will be removed to comply with lot coverage requirements. The planting of native vegetation will be required to be maximized on-site to meet buffer mitigation requirements and improve water quality management. Therefore, the buffer impacts to allow for the proposed garage and continued existing uses will result in minimal adverse impacts to plants or wildlife, and the sixth criterion can be met by meeting the buffer mitigation requirements, and by retaining existing forest on the site.

The seventh criterion requires that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The applicant must comply with all Critical Area requirements for the continued existing use of the dwelling, deck, shed, driveway, and yard areas, and for the construction of the garage on a property that was developed prior to the Critical Area law. By meeting these requirements, the granting of the variance request will be in harmony with the general spirit and intent of the Critical Area regulations and the seventh criterion can be met.

Based upon our review, this Department finds that the above criteria have been met, or will be met through implementation of the conditions outlined below. Therefore,

the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The following note must appear on all plans associated with this project:

"On January 22, 2021, a variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection to allow for impacts to the Critical Area buffer for construction of a garage, and continued existing use of a dwelling, deck, shed, driveway, and yard areas. Conditions, including meeting buffer mitigation requirements, were placed on this variance to reduce water quality impacts. Any revisions to this proposal, or any new development involving impacts to the required buffer will require a new variance application for review."

2. The required mitigation for buffer impacts for this project is 1,884 square feet (3:1, 2,688 square feet minus lot coverage removed from the buffer, 804 square feet). The planting of native trees and shrubs within the Critical Area buffer shall be maximized to meet this requirement, and lot coverage mitigation requirements. If it is determined that all mitigation cannot be provided on-site, a fee-in-lieu of \$1.50/square foot made payable to Baltimore County would be required for the remainder. The buffer mitigation planting shall be completed prior to September 24, 2021.
3. This property must also meet the Critical Area forest requirements and lot coverage mitigation. The existing forest area must be retained along with any additional planting required, if necessary, to meet the minimum 15% forest required, and for lot coverage mitigation.
4. A Critical Area management plan outlining the proposed development, including the lot coverage requirements and the required buffer mitigation must be submitted to EPS for review. This plan must be approved prior to any permit approvals.
5. Upon approval of the Critical Area management plan by this Department, a security of no less than \$0.25 per square foot of planting area shall be submitted to Baltimore County with an Environmental Agreement. The security must be submitted prior to any permit approval. The plantings must meet a 100% survivability requirement for two years following the EPS approval of the initial planting.
6. A Critical Area Easement must be recorded in Baltimore County Land Records along with the appropriate declaration of protective covenants, conditions, and restrictions. Recordation must be completed prior to permit approval.

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7. Critical Area "Do Not Disturb" signs shall be installed at the locations shown on the approved Critical Area management plan. This requirement must be completed prior to permit approval.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed pursuant to COMAR 27.01.12.07 C.

The property owner(s) must sign the statement at the end of this letter, and then return the signed letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Paul Dennis at 410-887-3980.

Sincerely yours,

David V. Lykens
Director

DVL: pad

Enclosures: Critical Area Buffer Assistance Guide, Lot Coverage Assistance Guide
Sign Specifications, Site Plan Guidance

c: Susan Makhoulouf, Critical Area Commission

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Baltimore County Code Article 33. Environmental Protection And Sustainability, Title 2 Chesapeake Bay Critical Areas Protection.

Property Owner Signature(s)	Property Owner Printed Name(s)	Date
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